(2)

XH-189/(Jail)
C. J. P. R. 11/94/2,000

CF0000061531

G.A. 2345/97

APPEAL OF PRISONER

Division Bench (Criminal)

No. 6517 Name दायकराम सा/ए

Father's name रियाराम साहू उम्र 21 वर्ष जाति अवधी

Residence रीवा जि.रीवा (म.प्र.) Age 25 वर्ष

Sentenced to आजीवन कारावास व 2-वर्ष कठोर On 24-9-97

Under section 302/201 भा.द.वि. by माननीय पंचम अपर सत्र न्यायाधीश रीवा (म.प्र.)

S.T. No - 448/95

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent .....

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 6517 Name दायकराम S/o रियाराम साहू

Confined in केन्द्रीय Jail जबलपुर (म.प्र.)

No. 359/केंद्रीय/97 Dated 20/10/1997

Forwarded to the CHIEF JUDICIAL MAGISTRATE माननीय मुख्य न्यायिक मजिस्ट्रेट माननीय उच्च न्यायालय मध्य प्रदेश, जबलपुर

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

निवेदन - S.T. No - 448/95 की सत्यप्रतिलिपी

Superintendent
Superintendent,
Central Jail Jabalpur (M.P.)

Date of receipt in ..... office ... Court of Madhya Pradesh JABALPUR

Date of receipt record to accompany the ... Rec'd on 5 NOV 1997

Memo of Appeal to the Appellate court ... Registration No. 729 S Thakur

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No ..... Dated ..... 199.....

Forwarded to the .....

Date of receipt in Appellate Court .....

Receipt Clerk
High Court, Jabalpur.

(P. T. O.)

(16)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

CRIMINAL APPEAL NO.2345 OF 1997

CRIMINAL APPEAL NO.2379 OF 1997

AND

CRIMINAL APPEAL NO.2380 OF 1997

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge

7/04/2003

I agree

Sd/-
Chief Justice

Post it for: 8 /04/2003

Sd/-
L.C. Bhadoo
Judge

(12)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH: HON'BLE SHRI K.H.N. KURANGA, CJ &
HON'BLE SHRI L.C. BHADOO, J

CRIMINAL APPEAL NO.2345 OF 1997

Dayakram Sahu

VERSUS

The State of Madhya Pradesh

CRIMINAL APPEAL NO.2379 OF 1997

Dayakram Sahu

VERSUS

The State of Madhya Pradesh

AND

CRIMINAL APPEAL NO.2380 OF 1997

Dayakram Sahu

VERSUS

The State of Madhya Pradesh

Present: Mrs. Savita Tiwari, Advocate for the appellant.
Miss S. Singhai, Dy. Govt. Adv., for the State/respondent.

J U D G M E N T

(Delivered on 9th of April 2003)

The following Judgment of the Court was delivered by ***L.C. Bhadoo, J:***

These appeals have been preferred by the accused/appellant through Superintendent, Central Jail, Raipur being aggrieved by the judgments of conviction and sentence dated 24/09/1997 passed by the

learned V Additional Sessions Judge, Durg in Sessions Trial Nos.448 of 1995, 451 of 1995 and 452 of 1995 by which the learned Additional Sessions Judge convicted the accused/appellant under Sections 302 and 201 of the Indian Penal Code for committing the murder of Devsari Bai, Parmila Bai and Rambishud and sentenced him in each case separately i.e. in all the sessions trial cases mentioned above to undergo imprisonment for life and to pay fine of Rs.2,000/- in default of payment of fine to undergo further simple imprisonment for one year under Section 302 of the Penal Code and to undergo rigorous imprisonment for two years under Section 201 of the Indian Penal Code, on each count. Both the sentences were directed to run concurrently.

(2) All these three criminal appeals are being decided together as they relate to the crime committed at one point of time. Since the witnesses are same and incident is also same, therefore, it is convenient to decide all these three appeal together.

(3) The relevant facts for the disposal of these appeals are that on 21/08/1995 accused/appellant Dayakram himself reported the matter to the Station House Officer, Police Station, Deori at about 10.00 in the night along with other persons namely Patel Gangaram, Panchas Radhelal and Ratiram, his brother Surendra Sahu and Subedar stating that on that day i.e. 21/08/1995 at about 2.00 P.M. during the day he went to the well of his house for fetching the water. On reaching the well he saw that the dead body of his niece Devsari Bai is floating on the water. On this, he immediately informed the persons namely Gangaram, Radhelal, Ratiram, Dhan Sahu and Santu Sahu and came to the Police Station. Devsari Bai has committed suicide by

jumping into the well. Upon this Merg intimation, during the investigation when on the next day the Police reached the site of incident and they started taking out the body of Devsari Bai they also found the dead bodies of Parmila Bai and Rambishud in the well and Gadda and Chaddar were also found in the well. Regarding the death of Parmila Bai - wife of Surendra Sahu, the Kotwar of the village namely Deepakdas gave a Merg intimation (Ex.P/3) which was registered as Merg Intimation No.17/95. There were injuries on the head and temporal region of the dead bodies and fracture was also found. After conducting the post mortem when the doctor opined that it is a case of homicidal death the case was registered for murder and during the investigation the accused/appellant Dayakram gave the information under Section 27 of the Evidence Act about the weapon of offence an adze (Vasula), an instrument meant for chiseling and cutting of the wood and the blood smeared clothes. Shanti Bai (PW-3) wife of the accused gave statement that the accused had made extra judicial confession before her that after committing the murder of all the three deceased he has thrown their bodies into the well and further this fact was narrated by Shanti Bai (PW-3) to his father Dukal (PW-2). The statements of these witnesses were got recorded under Section 164 of the Code of Criminal Procedure.

(4) After completing the investigation, the police filed separate charge-sheet for each of the three murder cases for the offences punishable under Sections 302 and 201 of the Indian Penal Code.

(5) The learned Additional Sessions Judge framed the charges in each of the Sessions trial under sections 302 and 201 of the I.P.C. and explained to the accused, who, in turn denied the charges.

(6) The prosecution in order to prove the charges against the accused appellant examined in all twelve witnesses at the trial. On the other hand, the statements of the accused appellant were recorded in all the three cases under Section 313 of the Code of Criminal Procedure in which he simply denied the statements of the prosecution witnesses. In defence the accused appellant produced one witness Prem Prasad Mishra (DW-1).

(7) The Additional Sessions Judge after hearing the learned Public Prosecutor and the learned counsel for the accused convicted and sentenced the accused appellant in all the sessions cases as mentioned above.

(8) We have heard Smt. Savita Tiwari, learned counsel for the accused/appellant and Miss Sharmila Singhai, learned Dy. Govt. Advocate, for the State/respondent.

(9) Learned counsel appearing for the accused/appellant argued that there is no eye witness in this case. The case rests only on extra judicial confession made by the accused/appellant and also on the circumstantial evidence. The witness Shanti bai (PW-2) has resiled from her previous statement about the extra judicial confession. Therefore, the statement of this witness does not inspire confidence. As far as recoveries of adze (Vasula) and the clothes of the accused are concerned, there is no report that the same were found stained with blood. Therefore, they cannot be connected with the murder being committed by the accused/appellant.

(10) On the other hand, learned Dy. Govt. Advocate supported the judgment of the trial Court.

(11) We have perused the evidence available on records of the trial Court and have gone through the judgment.

(12) In order to prove the offence against the accused/appellant the prosecution has tried to prove the offence based on extra judicial confession made by the accused before his wife Shanti Bai (PW-2) and also the circumstantial evidence about the recoveries of adze and the blood stained clothes of the accused/appellant.

(13) Now coming to the extra judicial confession made by the accused/appellant before his own wife Shanti Bai (PW-3), as per the settled law on this point in order to base the conviction on the extra judicial confession the Court must satisfy before placing reliance on the extra judicial confession that the extra judicial confession is true, made voluntarily, reliable and convincing and then and then only that can form the basis of conviction. In the present case, the learned trial Court has believed the extra judicial confession made by the accused/appellant before his wife Shanti Bai (PW-2) and convicted the accused/appellant on that basis. If we scrutinized the statement of Shanti Bai (PW-2) in Sessions Trial No.448 of 1995 she has said that Dayakram is his husband, Surendra is her brother-in-law being the elder brother of her husband and both of them reside separately. The accused woke her up in the night and informed that after murdering his Bhabhi Parmila Bai, niece Devsari Bai and nephew Rambishud he has thrown the bodies into the well. On the second day frightened by the incident she left for her maternal house and she informed her father

about the statement of the accused/appellant. About this, she gave the statement under Section 164 of the Code of Criminal Procedure. She has stated that his husband Dayakram and his brother Surendra are residing separately. In the Sunday night his husband did not tell anything to her. He did not tell her that he has murdered his Bhabhi, niece and nephew. This witness has been declared hostile and on cross-examination by the Public Prosecutor she has said that she did not give the statement (Ex.P-2) and she does not know how the police has recorded the said statement. She told her father that she does not know how her sister-in-law (Jethani) and her children died. She has said that it is wrong that his husband discloses her in the Sunday night at about 1.00 P.M. that he has murdered his Bhabhi, niece and nephew and she did not give the statement before the Court about the murder. In Para 6 of her statement she has said that it is true that in the night her husband woke up her from sleep and told her that after murdering his Bhabhi, niece and nephew he has thrown their bodies into the well and thereafter her husband told her that if you want save me, otherwise run away. She gave the statement before the Magistrate. In the cross examination by the learned counsel for the accused, she has said that she can sign whenever she is asked to sign she signs or whenever she is asked to put thumb she put thumb impression. When questioned again, she has said that earlier she forgotten, but it is true that her husband made extra judicial confession about the three murders. In Para 8 of his statement she has said that when she made statement before the Court the Police took her to the Court and on account of the fear of the Police she gave the statement. Thereafter in the next line she has said that whatever she is knowing she gave before the Police. Again in her statement she has said that it is true that she was frightened by the Police. Even in the Court she was

frightened by the Police. Again on a question she has said that even today she is giving the statement being frightened and said that she is frightened that what she will utter in the Court. Even in para 11 she has said that while giving the evidence before the Magistrate she was frightened. In para 12 of her statement she has said that when the Police came to her house being scared by the Police she left for her maternal house. In Para 13 of her statement she again said that she disclosed before the Magistrate that she did not know anything about the Maarpeet. Even today she does not know that who murdered her Jethani, nephew and niece. In para 15 of her statement she has said that when she came to know about the dead bodies in the morning she left the house to her maternal house due to fear. On reaching the maternal house she told her father that she has come due to the fear because somebody has murdered somebody and thrown into the well. It is true that in our family and in the family of Surendra the children were going to the house of each other. The relations between the accused and Surendra were cordial.

(14) Looking to the above statement of Shanti Bai (PW-2) it cannot be said that the above statement is true and made voluntarily for the reasons that at some places she has said that before the Magistrate and also before the trial Court she gave the statement under the fear of the Police. It is true that the accused is her husband. Therefore, there is a possibility that she might have resiled from her previous statement. If we look at the matter from that angle then this principle also applies when she initially told before the Magistrate and to his father and she was knowing that if she will disclose the confession made by the accused before them that will ultimately be going to effect and harm the interest of her husband and

he will be implicated in the crime. In number of occasions during her statement before the trial Court she has changed her stand, therefore, the confidence cannot be reposed on her statement and this is the only statement upon which the question is to be decided as to whether on her statement the prosecution has been able to bring home the offence against the accused/appellant. The answer, looking to the statement of this witness, is that this statement of the witness cannot be relied upon and cannot be made the sole basis of the conviction of the accused.

(15) Dukal (PW-3) father of Shanti Bai (PW-2) has said that her daughter informed her that somebody had murdered her Jethani, nephew and niece and therefore out of fear she has come back. On knowing this, he immediately sent Shanti Bai back. In the cross examination he has said that he did not said before the Magistrate that his daughter informed him that her husband after murdering three persons threw their bodies into the well. If we look at the above statement of this witness, Shanti Bai (PW-2) at many times as mentioned above has made contradictory statement. Sometime she has said that the accused/appellant confessed before her and sometime she said that her husband did not confess before her and she gave the statement before the Magistrate because of fear of the Police and even on that day she was frightened by the Police. Moreover, in view of this, therefore, there is no other evidence, which goes to show and support the prosecution story that the accused was responsible for the murder of three persons. Even the accused himself went to the Police Station to lodge the report about the death of Parmila Bai. He informed the villagers. No other witness has come forward to state whether the accused and the family of the deceased had any strained

relations. Even though Surendra (PW-1) has said that he and his brother were residing in one house and they had partitioned the land of the father. That partition took place in front of the Panchas. He has said that at the time of the partition, Dayakram - the accused said that how you had got deposited rupees twenty thousand in your bank account. He caught hold of his collar and the accused admitted before him that he committed this mistake but in his evidence it is not mentioned that when this incident took place and even thereafter whether he was having animosity against him. Therefore, based on this statement of PW-2 Shanti Bai it cannot safely be concluded that whether in fact the accused is responsible for committing the murder of the three deceased persons. In Sessions Trial No.451 of 1995 in the examination-in-chief Shanti Bai has said that her husband confessed before her that after murdering the deceased persons he has thrown the bodies of Bhabhi, nephew and niece into the well. But again in the cross examination in para 5 she has said that whatever she has said was said on account of the fear of the police because the police harassed her and her husband after arresting her husband. In para 6 of the statement she has said that when her husband came in the night he did not tell anything to her. She woke up only in the morning. In para 7 she has said that when the Police came for the first time to the house then she has said that she does not know anything. When the police said that your husband had killed three persons then I said that it may be possible because everyone was saying so, I said it may be possible.

(16) Dr. D.L. Ramteke (PW-8) who conducted the post mortem on the dead body of deceased Devsari Bai, has proved the post mortem report (Ex.P/15) in which he has given his opinion that the cause of death seems to be homicidal and the fracture and incised wounds were

found on the head of the deceased and all the injuries were ante mortem in nature. Similarly, about the death of deceased Parmila Bai, this witness has deposed as PW-8 that he conducted the post mortem on the body of the deceased three incised wounds were found on the neck and on the head. The injuries were ante mortem in nature and the nature of the death was homicidal. The post mortem report is Ex.P/14. Similarly, about the death of Rambishud, Dr. S.S. Devdas has again deposed as PW-8 that the death of Rambishud was homicidal and post mortem report is Ex.P/12. Three injuries were noticed on the head and neck of the deceased and fracture was found on the head. Therefore, in view of the statement of doctor and the post mortem reports, it is proved that the death of the three deceased viz. Parmila Bai, Devsari Bai and Rambishud were homicidal in nature.

(17) Now coming to the question of recovery of the adze (Vasula) on the basis of the information (Ex.P/17) given by the accused/appellant that he can get recovered the adze, by which he committed the offence, Sarpanch Munnalal Deshlahare (PW-10) has said that through Ex.P/9 the accused at his instance got the adze recovered from his house and a Baniyan, underwear and Dhoti were also recovered at his instance. On this adze it is mentioned in the recovery memo that there were blood stains and on the Baniyan and underwear there were also blood stains. But if we look at the report (Ex.P/25) of the Forensic Science Laboratory, this shows that the blood was found on the Baniyan-(Article-I) but no blood was found on underwear. The blood was found on Articles I and K. But on the basis of this report the adze cannot be connected with the murder of the deceased persons because there is no report of the serologist that the blood on the adze was human blood and the group of that blood was of

the same group which were of the deceased persons. In view of this, on the basis of the recovery and the report of the FSL, the accused cannot be connected with committing the crime by the adze as mentioned above.

(18) In the result, in order to fasten the crime on the accused and convict him for the murder of his own Bhabhi, nephew and niece the circumstantial evidence adduced by the prosecution is not such that on the basis of that it can only be inferred that the heinous crime was committed by the accused only and innocence of the accused is ruled out. All other circumstances taken together may point a finger of suspicion towards the accused/appellant but suspicion, howsoever, strong cannot take the place of proof.

(19) In the result, the conviction in the above all the three cases cannot be sustained because the finding of the learned trial Court is not based on any convincing evidence. As such, Criminal Appeal Nos. 2345 of 1997, .2379 of 1997 and 2380 of 1997 are allowed. The conviction and sentence awarded to the accused/appellant for the offences under Sections 302 and 201 of the Indian Penal Code in Sessions Trial Nos.Nos.448 of 1995, 451 of 1995 and 452 of 1995 are set aside. The appellant be set at liberty forthwith if not required in any other case.

Sd/-
Chief Justice

Sd/-
L.C. Bhadoo
Judge

9 /04/2003

Brajesh*